

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD D. NEFF,

Plaintiff,

-vs-

DECISION and ORDER
No. 1:16-cv-875 (MAT) (JJM)

COUNTY OF ERIE, NEW YORK,
ERIE COUNTY SHERIFF'S DEPARTMENT,
DEPUTY SHERIFF BRADFORD G.
BALLANTYNE, DEPUTY SHERIFF JOHN
DOE 1-10, DEPUTY SHERIFF JANE DOE
said names being fictitious, but
intended to be the
arresting/participating officers
in the incident herein,

Defendants.

I. Introduction

This matter is before the Court upon the Report and Recommendation (Dkt #8), dated April 4, 2017, issued by Magistrate Judge Jeremiah J. McCarthy ("the R&R"). For the reasons discussed herein, the Court adopts the R&R in full.

II. Factual Background and Procedural History

Richard D. Neff ("Plaintiff"), represented by counsel, commenced this action in State of New York Supreme Court, County of Erie, seeking relief against Defendants pursuant to 42 U.S.C. § 1983 ("Section 1983") and New York State tort law. After removing the action to federal court, Defendants filed their answer and subsequently moved to dismiss the complaint pursuant to Rules 4(m), 12(b)(6), and 12(c)(3) of the Federal Rules of Civil Procedure. Plaintiff opposed the motion (Dkt #6), and Defendants filed a reply

(Dkt #7). Judge McCarthy recommended that Defendants' motion be granted and that the complaint be dismissed. Objections to the R&R were due by April 18, 2017, but neither party filed objections. The case was transferred to the undersigned on May 1, 2017.

III. Standard of Review

To preserve a claim for review by the district court, the party must make sufficiently specific objections to the R&R. E.g., Mario v. P & C Food Mkts., Inc., 313 F.3d 758, 766 (2d Cir. 2002). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citing FED. R. CIV. P. 72(b), Advisory Comm. Notes (when a party makes no objection, or only general objections to a portion of an R&R, the district judge reviews it for clear error or manifest injustice); further citation omitted). When timely objection has been made to a portion or portions of a magistrate judge's report, the district judge must "make a de novo determination" of "any portion of the . . . disposition to which specific written objection has been made. . . ." FED. R. CIV. P. 72(b). The district judge may then accept, reject or modify, in whole or in part, the magistrate judge's proposed findings and recommendations. 28 U.S.C. § 636(b)(1).

IV. Discussion

Having reviewed Judge McCarthy's thorough R&R, the Court finds no clear error. The Court agrees that Plaintiff's purported Section

1983 claims against the individual defendants are barred by the Eleventh Amendment insofar as he alleges that the individual defendants were acting in their official capacity. (See R&R at 3). With regard to the Sheriff's Department, Judge McCarthy properly concluded that since it is not a separate legal entity capable of being sued individually, the only defendant potentially subject to Section 1983 liability is the County of Erie. (See R&R at 4). However, as Judge McCarthy also correctly found, Plaintiff's allegations of municipal liability were too conclusory to withstand dismissal under FED. R. CIV. P. 12(b)(6). Finally, Judge McCarthy exercised jurisdiction over the remaining state law claims for purposes of dismissing them on the merits, in order to prevent fruitless state court proceedings. The Court agrees with Judge McCarthy that the state law claims were meritless and/or untimely, and would not survive in state court. Thus, Judge McCarthy's decision to exercise pendent jurisdiction over them was correct.

V. Conclusion

For the foregoing reasons, the Court adopts the R&R (Dkt #8) in full and grants Defendants' motion to dismiss (Dkt #3). Accordingly, Plaintiff's complaint (Dkt #1) is dismissed in its entirety. The Clerk of Court is directed to close this case.

SO ORDERED.

S/ Michael A. Telesca

HONORABLE MICHAEL A. TELESKA
United States District Judge

DATED: May 2, 2017
Rochester, New York